

UNIVERSITY OF TORONTO  
THE GOVERNING COUNCIL

REPORT NUMBER 134 OF THE ACADEMIC APPEALS COMMITTEE

JULY 26TH, 1990

To the Academic Board,  
University of Toronto

Your Committee reports that it held a hearing on Thursday, July 26th, 1990 at 1:00 p.m. in the Falconer Room, Simcoe Hall at which the following were present:

- Professor J. B. Dunlop (Chairman)
- Mr. R. Behboodi
- Professor J. Mayhall
- Professor K. G. McNeill
- Dr. D. I. Murdy
- Ms S. Girard, Governing Council Secretariat

In Attendance:

- Mr. *Yz*
- Mr. Mark Demeda, Downtown Legal Services
- Professor Victor Falkenheim
- Ms Lesley M. Cameron, Cassels, Brock and Blackwell

On Thursday, July 26th, 1990, the Academic Appeals Committee heard the appeal of *Mr. Yz*. One would have expected the appeal to be from a decision of the Appeals Board of the Faculty of Arts and Science but the Committee realized only after our hearing that this was not the case. We learned subsequently that there are two appeal "routes" in the Faculty of Arts and Science, one through the Committee on Standing to the Academic Appeals Board, in the case of an appeal relating to the interpretation of a rule and the other through the Departmental Chair and the Dean's office in the case of an appeal concerning the pedagogical relationship of the instructor and the student. The latter seems not to provide for a hearing unless and until the case reaches this Committee. Further, it was not clear from the calendar that an appeal from the Dean to this Committee was contemplated. Nevertheless, it was with the concurrence of the Dean that the matter came to this Committee. The appellant, after protracted discussions seeking what might be called "administrative relief", asked what next he might do and was advised by the Associate Dean (letter dated October 30th, 1989) to approach this Committee.

Had we noticed the point earlier we would have inquired about it at the hearing. But, as we had heard the evidence and argument and the parties and their counsel had departed, the Committee felt it had no real choice but to make a decision on the merits and pursue the other question on our own. This Committee has some reservations about the Faculty's procedure. We feel it should provide for a hearing within the Faculty, at least by the Academic Appeals Board if not at an earlier stage. It seems more likely such a process would produce a result acceptable to appellants without the necessity of an appeal to this Committee. That is not

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to say, of course, that this Committee wishes to avoid work, although our load is admittedly made a great deal lighter by the effective functioning of a divisional appeal committees. It is this Committee's opinion that a satisfactory decision within a Faculty, College or School is preferable from all viewpoints to a solution imposed by a university-wide committee.

In any event, we feel the calendar should clarify the appellant's right to appeal to this Committee.

The decision of the Committee is that the appeal, in which the appellant sought a five percent increase in his final grade in EAS100Y Modern Standard Chinese, must be dismissed.

The appellant was a first-year student in 1987-88. He had been awarded a St. Michael's College Foundation scholarship. His program of studies in that year included CHM135Y (General Chemistry), MAT140Y (Linear Algebra and Geometry), MAT150Y (Analysis) and PHY150Y, (Forces and Phenomena) in addition to EAS100Y. He earned a grade of B+ in chemistry, A- in each of the math courses and A in physics but his grade in Chinese was only C+ and in the result he failed to retain his scholarship.

The grounds of appeal were these: he had enrolled in the course relying on the calendar description, which included the statement "Open only to students with no prior experience in any Chinese dialect." But, the appellant said, it turned out that a number of students with a knowledge of Chinese, including some with fluency in another dialect, had enrolled. This, he contended, was bound to put the others at a disadvantage. It would, he believed, affect the grading process and result in lower marks for the complete novices.

The dialect of the course was Mandarin which, we were informed by Professor Falkenheim, the Chairman of East Asian Studies at the time the issue arose, is the standard dialect of North China spoken by 70 percent of the people. Most Chinese immigrants to Canada are from Hong Kong where Cantonese is spoken. Mandarin-speakers and Cantonese-speakers cannot communicate orally, although the written language would be the same. Knowledge of another dialect could, nevertheless, be helpful in the study of Mandarin. There is thus a course in Mandarin for Cantonese speakers.

The appellant said that he had taken his concerns to the instructor who assured him he would not be prejudiced by the circumstances. Allowance would be made in marking for his lack of experience and, as well, any Chinese-speakers would be screened out. These seem somewhat inconsistent approaches to the problem and the Committee considered that there was some misunderstanding on the appellant's part. The implementation of either would render the other unnecessary: an allowance in grading would be wholly unjustified if the experienced individuals were screened out but an allowance in grading for lack of experience would make screening unnecessary. In any event, the appellant asserted that any screening that may have taken place had been ineffective and that he had received no allowance in the grading for his inexperience.

The appellant presented a statistical analysis he had made, comparing the grades of two groups: those with Chinese backgrounds (based on Chinese surnames) and those without. The two groups of marks, without names attached, were provided by Professor Falkenheim. The appellant's analysis showed a 5 percent difference in the average in favour of those who were "experienced in Chinese" and on this basis asked for the five percent increase, noting that this would put him in the class average for the course. The Committee has some doubts about the validity of the division by surname especially since the appellant had been placed in the Chinese group.

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In any case, the validity of the appellant's evidence was refuted by Professor Fletcher, a member of the Political Science Department, whose scholarly interests include: methods and research design, data analysis, and statistical techniques. He had been consulted by Professor Falkenheim. According to Professor Fletcher, the appellant's calculations, while correct, produced for purposes of drawing the desired conclusion, a confidence level of only 85 percent. This meant that there was a 15 percent possibility of the difference in result being due to chance. The accepted standard for evidentiary purposes, Professor Fletcher told us, is 95 percent. Furthermore, said Professor Fletcher, the average of grades of the non-Chinese group were affected by the fact that four members of the class who were in that category had failed to complete the course. If their results were ignored the standard deviations of the two groups fell into line. The group was large enough that four dropouts could occur by chance and thus the analysis was not impaired.

Professor Falkenheim told the Committee the instructor would not have had any authority to promise an allowance for inexperience nor would she have been authorized to make any allowance in grading, although she would give the student who needed it special help during the course. He agreed that it was impossible to devise a reliable screening method to prevent students with some prior facility from taking the course. The instructor reiterates the regulations at the beginning of the course, and speaks to students individually. Students sign a pledge card. If it were determined that a student possessed experience in the language he or she would be ejected from the course. But these are not fool-proof methods. One student had been removed on this basis.

Professor Falkenheim agreed that the language of the course description should possibly be altered so as not to give the impression that no one with experience could take the course since it was always possible some could slip through the screening process. Nevertheless, as a result of his review of the grades in EAS100Y Professor Falkenheim did not think anyone had been disadvantaged. He had no evidence that anyone in the course had an extensive knowledge of any Chinese dialect. Some might have demonstrated knowledge of a few words, phrases or characters but this was not significant. The appellant had said he could call witnesses and that he might give us names of students who could support this claim, but in the end he decided not to do either.

The teaching assistant responsible for the appellant's section of the course testified that he held dialogue reviews, tested vocabulary, asking questions and receiving responses, gave dictation and marked assignments. He corrected mistakes. The students obtained credit for getting the assignments done. The appellant had earned no marks from assignments. When it was indicated to him by the appellant's counsel that 10 of the 15 assignments had been given to the Professor and the other five handed in at the end of the year, the teaching assistant responded that, while the appellant might thus claim to have done the work, he had not received the benefit of the corrections and review. There was a correlation between handing in assignments and dictation marks. The appellant's performance on dictation was from poor to average.

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The Committee's view is that a student who relied on a misleading course description to his or her detriment might well be entitled to some sort of remedy. However, the Committee was not satisfied that the appellant had suffered detriment. He believed there were people with significant knowledge of Chinese in the course, but the evidence was from the Committee's standpoint, flimsy. The appellant described the use of Chinese by some students in certain settings but this evidence did not establish more than possession by these individuals of the few words or phrases Professor Falkenheim said would not be significant. His statistical analysis, given Professor Fletcher's response, did not establish in the Committee's opinion that he had suffered detriment. The teaching assistant's evidence supported the instructor's view, which had been expressed in a letter of support for the appellant to retain his scholarship. This was that the grade fell well below the student's capability, but represented accurately the student's performance.

Secretary  
September 12th, 1990

Chairman